

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 5TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/174/2022

BETWEEN:

MALLAM SHEHU DIKKO

CLAIMANT

AND

- | | | |
|---|---|------------|
| 1. ATTORNEY-GENERAL OF THE FEDERATION | } | DEFENDANTS |
| 2. INDEPENDENT CORRUPT PRACTICES AND
OTHER RELATED OFFENCES COMMISSION | | |
| 3. THE STATE SECURITY SERVICES | | |

RULING ON PRELIMINARY OBJECTION

In an Originating Summons filed on the 28th of October, 2022 the Claimant – Mallam Shehu Dikko raised 8 questions for interpretation binding on **S. 318(1) – Item 1 - 16 Part 2 5th Schedule of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), **S. 18 Interpretation Act, S. 2 ICPC Act, Article 1(a) NFF Statute 2010** on whether the Claimant and his colleagues are public officers and ought to declare their assets upon taking oath of office as Executive Members of Nigeria Football Association (NFF). They also want interpretation of

other provisions – **S. 44(1) and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and others.

He wants 12 Declaratory Order and 13 Order of this Court as fully contained in the face of the Originating Summons. He supported it with Affidavit of 104 paragraphs.

Upon receipt of the Originating Summons the 1st Defendant – Attorney-General of the Federation filed a Counter Affidavit of 6 paragraphs and a Written Address while the 2nd Defendant – Independent Corrupt Practices and Other Related Offences Commission (ICPC) filed a Preliminary Objection challenging the jurisdiction of this Court to entertain the Suit; urging Court to STRIKE OUT the Suit for want of jurisdiction. The Preliminary Objection was based on three (3) grounds which are:

- (1) That claims for Declarations and Injunctions sought in this Suit are against the Federal Government and its agencies.
- (2) That by **S. 251(1)(r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), the Federal High Court is vested with the jurisdiction to entertain matters which are premised on Declaration or Injunction affecting the validity of decision of a Federal Government Agency.
- (3) That **S. 251(1)(q) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) vests exclusive jurisdiction on the Federal High Court in the operation and interpretation of Constitution in

so far as it affects the Federal Government or any of its agencies.

The 2nd Defendant filed a Written Address.

It is imperative to state that basically the Originating Summons is on interpretation of provisions of **S. 318(1), 44(1), 361 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) as well as **S. 18(1), S. 2, S. 6(b) and S. 45 of the ICPC Act 2000.**

In this Preliminary Objection, as already stated, the 2nd Defendant is challenging the competency of the Suit against it and the jurisdiction of the Court to entertain same. In the Written Address the 2nd Defendant raised a lone Issue for determination which is:

“Whether the FCT High Court has the jurisdiction to entertain the Suit by virtue of S. 251(1)(p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).”

They submitted, citing the old cases of:

Madukolu V. Nkemdilii
(1962) ALL NLR, 589

Altine V. Afribank PLC
(2000) 15 NWLR (PT. 687) 181

Mark V. Eke
(2004) 5 NWLR (PT. 865) 54

Adelekan V. Ecu-Line NV
(2006) 12 NWLR (PT. 995) 483

NEPA V. Edegbero
(2002) 18 NWLR (PT. 798) 79

The 2nd Defendant submitted thus:

That the mere fact that a Federal Government Agency is a party in the Suit is not sufficient to confer jurisdiction on the FCT High Court. That Court has to take into consideration the nature of the subject matter of the case before the Court. That the Suit involves the interpretation of the power of the 2nd Defendant. That the Reliefs been sought are for Declaration and Injunction targeted at validity of the decision of the 2nd Defendant (ICPC). That the issue and claims/Reliefs sought in this case form the crux of this matter as enumerated in **S. 251(1)(p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He referred to the cases of:

Peter Essi V. Nig. Ports PLC
(2018) 2 NWLR (PT. 1604) 361

GTB V. Senior Staff Association of Nigeria Polytechnics, Federal Polytechnics, Ado Ekiti
(2021) LPELR – 55541 (CA)

That to determine the jurisdiction, the Court must look at the pleadings of the claim and not in the Counter Affidavit. That the issues sought to be determined are related to the powers of an Agency of the Federal Government which in this case is the 2nd Defendant. That this Court lacks jurisdiction to entertain the Suit considering the parties involved as the issue involves interpretation of the Constitution and other Acts of the National Assembly as it

affects and relates to the administration of the 2nd Defendant (ICPC), an agency of the Federal Government. That this Court lacks jurisdiction to do so. He referred to the case of:

**FGN & Anor V. Oshiomole & Anor
(2004) LPELR – 7363 (CA)**

That in this case the Claimant is challenging the investigative power of the 2nd Defendant to investigate him and seeking some Declaratory and Injunctive Reliefs and Orders of this Court against the 2nd Defendant. That such Orders/powers falls within the exclusive jurisdiction of the Federal High Court. They referred to the provision of **S. 251(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). They submitted that from the **S. 251(1)** the Federal High Court has exclusive jurisdiction to entertain cases and matters set in the said provision including Suits on interpretation of the provision of the Constitution. That this Suit falls into the exclusive jurisdiction of **S. 251(1)**.

That even the other Sections of the law – **S. 318(1), 44(1) and 36(1)** all falls on the powers of the Federal High Court as it delve into exclusive jurisdiction of the Federal High Court. They urged Court to strike the Suit out with substantive cost. They placed credence on the case of:

**Canman Consult V. Governing Council, Federal Polytechnic Ado Ekiti
(2013) LPELR – 20530 (CA)**

That by the nature of the issue before this Court and the names of the Defendants who are all Government Agencies, this Court lacks jurisdiction to entertain this Suit based on **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). They urged Court to strike out the Suit for want of jurisdiction.

The 2nd and 3rd Defendants did not file any Counter to the Originating Summons.

Upon receipt of the Preliminary Objection the Claimant filed a Written Address in opposition, vehemently challenging the Preliminary Objection. He raised an Issue for determination which is:

“Whether from the circumstance of this Suit, this application is not bereft of any merit and liable to be dismissed.”

He submitted that the 2nd Defendant has no vires to file a Preliminary Objection with no Counter Affidavit or Statement of Defence. That the 2nd Defendant’s action in this case amounts to Demurrer which has been long abolished by the Rules of this Court since 2004. He referred to **Order 32 of the High Court Rules 2015**. He urged Court to so hold. He placed credence in the case of:

Akintano V. Egunbohun

(2007) 9 NWLR (PT. 1038) 103 @ 124 Para C – D

That the 2nd Defendant failed to join issue with the Claimant on the main Suit before raising the Preliminary Objection. He referred to the cases of:

Zest News V. Waziri
(2004) 8 NWLR (PT. 875) 267

Ibrahim V. APC No.1
(2019) 16 NWLR (PT. 1699) 444 @ 460 Para D – G

That since the Preliminary Objection is filed without any Counter Affidavit in challenge of the Originating Summons it is incompetent and liable to be dismissed. He urged the Court to so hold. He cited the case of:

Akindele V. Abiodun
(2009) 11 NWLR (PT. 1152) 356 @ 390 Para C

That the 2nd Defendant is out of time in filing its Process having been served since 14th December, 2022. That the 2nd Defendant did not obtain leave to file its Process. He referred to **Order 49 of the High Court Rules 2018**. That action of the 2nd Defendant in that regard renders the Preliminary Objection void. He relied on the cases of:

U.B.N. Limited V. Odusole Bookstore Limited
(1995) 9 NWLR (PT. 421) 558

Emerald Energy Resources Ltd V. Signet Advisors Ltd
(2021) 8 NWLR (PT. 1779) 579

That the Preliminary Objection is therefore incompetent, having been filed without leave of Court first obtained. He referred to the case of:

Okonkwo V. Okebukola
(2013) 17 NWLR (PT. 1384) 552 @ 565

That based on the decision on the above case there is no objection against the case of the Claimant by the 2nd Defendant.

That the fact that Federal Government Agencies are made parties does not divest this Court of the jurisdiction to entertain the Suit. That the subject matter falls within what this Court can entertain. He referred to the case of:

**Maduafokwa V. Abia State Government
(2009) 2 NWLR (PT. 1126) 457 (CA)**

That the present case does not bother on the administrative and management and control of the 1st – 3rd Defendants or on validity of any of their executive or administration or decision. That this Suit is on protection against arbitrary use of the power of investigation agencies to annoyance of law-abiding citizen like the Claimant and illegal taking over of the property lawfully acquired by the Claimant.

That cause of action in this Suit is on publishing a Notice of Seizure of the Residential property owned and occupied by the Claimant and his office at 1 River Benue Street Maitama which is within the jurisdiction of this Court; published on the 6th of October, 2022 in Daily Trust Newspapers. That the publication challenges the ownership of the properties.

He further submitted that the action is properly brought before this Court and he urged Court to so hold. He relied on the case of:

**S.P.D.C (Nig) Ltd V. Sirpi Austeel Construction Ltd
(2008) 1 NWLR (PT. 1067) 128 @ 150**

He urged Court to hold that the claim of the Claimant confers jurisdiction on this Court. He relied on the case of:

**NIMR V. NURTW
(2010) 12 NWLR (PT. 1208) 328**

That the present case relates and pertains to both matters over which the FCT High Court has jurisdiction to entertain. That it will give the Claimant right to sue as it is based on seizure of property lawfully acquired by the Claimant within the Territory of this Court. That this Court has the jurisdiction to determine same. That by the paragraphs listed in paragraphs 3.21 of the Written Address and **EXH 9, 10, 12, 27 & 28** attached to the Originating Summons that Court can see the title document of the said property belongs to the Claimant. That this Court is clothed with the jurisdiction to entertain any issue where trespass into property is involved whether the alleged trespass involves Agency of the Federal Government as in this case. That this Preliminary Objection is liable to be dismissed with cost. He urged Court to so hold.

The 2nd Defendant filed a Reply on Points of Law to the Claimant's Response to the Preliminary Objection. They responded to the 3 Issues raised by the Claimant – filing Preliminary Objection out of time, Demurrer and jurisdiction.

On the Issue of out of time, the 2nd Defendant submitted that it is competent because it is an application challenging the jurisdiction of the Court suo motu which can be raised at anytime even before the Court or on Appeal. That Rules of Court does not dictate when and how such point can be raised. They referred to the cases of:

Kato V. CBN

(1991) 9 NWLR (PT. 214) 126

Nasir V. CSC Kano State

(2007) 6 NWLR (PT. 1190) 253

Anya V. Anyi

(1993) 7 NWLR (PT. 305) 290

Kotoye V. Saraki

(1994) 7 NWLR (PT. 357) 414

On Issue of Demurrer, the 2nd Defendant submitted that the issue of demurrer cannot arise. That the Preliminary Objection is competent as it challenges jurisdiction of the Court which is different from a Demurrer. They referred to the case of:

Ajayi V. Adebisi & Or

(2012) LPELR – 781 (SC) Pp. 49 – 50 Para E – G

where Supreme Court distinguished Jurisdiction and Demurrer. They referred to the cases of:

NDIC V. CBN

(2002) 7 NWLR (PT. 766) 272 @ 296 – 297

Akinyemi & Anor V. Banjoko

(2017) LPELR – 42377 (CA)

**Whetto & Ors V. Awode & Ors
(2011) LPELR – 5100 (CA)**

That issue of jurisdiction is not controlled by Rules of Court as it is substantive and goes to the root of the existence of the case. He urged the Court to so hold.

On whether the Court has jurisdiction to entertain the Suit by virtue of **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended), it submitted that this Court has no jurisdiction to do so by virtue of **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) as the Suit seeks for interpretation of the Constitution against the Defendants who are Federal Government Agencies. That the Suit is brought by the exclusive provision of **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and under the Federal High Court jurisdiction.

That the argument of the Claimant is misconceived as it relates to the property in issue but on who and who is the issue on. That the claim can clearly be seen in the face of the Originating Summons. He urged Court to strike out the substantive Suit with cost.

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After the above summary, can it be said that this Court has jurisdiction to entertain this Suit which is premised on the question of the interpretation of **S. 251(1) (p) (q) & (r), S. 44(1) & 36(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and the extant provision

of the Interpretation Act? Is the Preliminary Objection competent since the 2nd Defendant did not file any Counter to the main Suit bearing in mind that Demurrer Proceeding does not exist any longer in our jurisdiction since 2004 same haven been abolished? Does this Court has the jurisdiction to entertain this Suit going by **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended)? That is: Is the issue in dispute covered under the provision of **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended)?

It is the humble view of this Court that this Court has the jurisdiction to entertain this Suit as the content of the Reliefs are not what is excusive to the Federal High Court as the 2nd Defendant is wrongfully postulating in this Preliminary Objection.

Besides, Demurrer Proceeding no longer exists in the FCT jurisdictional clime. So the 2nd Defendant having not filed a single paragraph of Counter Affidavit challenging the Suit of the Claimant in this Suit makes their stance in the Preliminary Objection to be fundamentally defective. However, since issue of jurisdiction, once raised, must be treated, this Court will go further to consider the Preliminary Objection and give its reason as required by law.

Again, it is imperative to state that where in a Preliminary Objection the determination of the issue in the Preliminary Objection will entail determining the issue in the

substantive Suit, the Court shall rather determine the main Suit together with the Preliminary Objection.

In this Suit the Preliminary Objection is challenging the jurisdiction of Court to entertain the Suit in that the issue in dispute is covered under the **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) and as such the Court should strike out the Suit for want of jurisdiction because the claims of the Claimant is against the Federal Government of Nigeria and its Agencies and as such the decision will affect the Federal Government Agencies and that it is exclusive to the Federal High Court which they claim has the exclusive jurisdiction. They have urged Court to strike out the Suit for want of jurisdiction.

It is imperative to state that in the main Suit the Claimant wants the determination of the provisions of **S. 318(1) and Items 1 – 16 of the 2nd Part of the 5th Schedule** as well as the **S. 18 (1) of the Interpretation Act, S. 2 & 6(b) ICPC Act and Article 1(1) of the NFF Statutes 2010** as well as **SS. 44(1) & 36(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) as it concerns the Ruling in Suit No.: **FHC/CS/1107/2019** in which the Court struck out the Application of the 2nd Defendant for Interim Forfeiture.

A look at the provision of the said **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) shows that sub paragraph (p) is on administration of Federal Government and control of its Agency.

Sub paragraph (q) is on operation and interpretation of Constitution as it affects federal Government and its Agencies. While sub paragraph (r) is on validity of any executive or administrative action or decision by Federal Government or any of its agencies.

It is important to point out that there is a provision in the said **S. 251(1)** which is to the effect that a citizen has a right to seek redress against the Federal Government or its Agency in action in Damage injunction or specific performance, in any Court where the action is based or any enactment, law and equity.

From the above it is glaringly clear that a citizen has the right to seek redress against Federal Government or any of its Agencies in any Court on any action on Damages. The person also has a right to seek redress on action on injunctions and specific performances. Such right to seek injunction can be exercised in bringing the action in any Court (High Court) of the place – State where the action is based. That means that a citizen has right to seek redress in an action against the Federal Government and its Agencies in another Court, State High Court which is not the Federal High Court. Hence, in any action for injunction, damages, specific performance, the citizen can take up an action or sue the Federal Government or any of its Agencies in any High Court of a State or Federal Capital Territory.

So in that wise the action of the Claimant in this case is not affected by the provision of **S.251 (1) (p) (q) and (r) of the 1999 Constitution of the Federal Republic o Nigeria** (as amended). That means that the action of the Claimant

in this case against the 2nd Defendant – ICPC is very proper and the Court has the jurisdiction to entertain the Suit.

Most importantly, this Court being and having the same status as any High Court in any part of Nigeria has the jurisdiction to entertain the Suit.

Again, going by the provision, the issue in dispute in the substantive Suit happened and it is based within the Federal Capital Territory. Hence, the exclusivity of the Federal High Court as provided in **S.251 (1) (p) (q) and (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) does not apply or affect the right of the Claimant to take the action he has filed in this case given the fact that the subject matter of the Suit is outside what is included in **S.251 (1) (p) (q) and (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). The claim is outside what can be entertained only in the Federal High Court. So, on that basis it is the humble view of this Court that it has the requisite jurisdiction to entertain the main Suit in this case.

In that view it shall determine the issues therein as it has the jurisdiction and SHALL NOT strike the matter out as the Respondent/Applicant had laboriously solicited for in this Preliminary Objection. So the Preliminary Objection lacks merit and it is hereby DISMISSED on that point.

Again, it is a vital provision of the Rules of this Court that Demurrer Proceeding does not exist any longer in our jurisdictional clime since 2004.

To refresh the minds of Counsel, by the advent of repeal of Demurrer Proceeding parties are required to file their Preliminary Objection together with their Response to the main Issue in dispute. By it the Court shall hear the Preliminary Objection and the main Suit where the circumstance and the nature of the action warrant. In that case, if there is merit in the Preliminary Objection the Court will say so, giving reasons and the matter ends. Otherwise, the Court will stake out or dismiss the main Suit and end its Proceeding. Otherwise, the Court will go on with the main Suit or application.

It is the wisdom and internment of the Drafters of the Rules for it to be so in order to save the precious time and resources of both the Court and Litigants as well as shorten and aid quick dispensation of justice. It is also imperative to further state that by so doing the clarion call that Courts should ensure quickly, judiciously and judicially dispensation of justice, as delayed justice loses its judicial efficacy and taste because of the belatedness. Demurrer Proceeding is not allowed in the Federal Capital Territory.

In this case, there is no evidence to show that the 2nd Defendant/Objector has filed even a single paragraph of Counter Affidavit in challenge of the Originating Summons filed and served on it by the Claimant/Respondent in this case. Therefore, failure to file and the absence of such Counter Affidavit by the 2nd Defendant amounts to Demurrer.

That means that filing only a Preliminary Objection without any Counter Affidavit amounts to Demurrer. This is what the Court held in the case of:

Akintaro V. Eegungbohuo

(2007) 9 NWLR (PT. 1038) 103 @ 124 Para C – D

The 2nd Defendant who had time to file this Preliminary Objection ought to have filed a Counter Affidavit challenging the main Suit along with the Preliminary Objection in which he challenged the jurisdiction of this Court to entertain the Suit. It ought to have joined issues with the Claimant on the substantive matter and then raised points of law and file the Preliminary Objection. Failure to do so rendered the Preliminary Objection fundamentally defective as it is caught up by the abolition of Demurrer within the FCT judiciary. See **Order 23 of the FCT High Court Rules 2018**. See also the decision of Court in the case of:

Zest News V. Waziri

(2004) 8 NWLR (PT. 875) 267

See also the most recent case of:

Ibrahim V. APC (NO. 9)

(2019) 16 NWLR (PT. 1699) 444 @ 460

It is the humble view of this Court that failure of the 2nd Defendant, ICPC, to file a single paragraph of Counter Affidavit with the Preliminary Objection makes the said Preliminary Objection incompetent and liable for dismissal. See the decision in the case of:

Akindele V. Abiodun

(2009) 11 NWLR (PT. 1152) 356 @ 390, Para H and @ 391 Para C

Long before now Demurrer had been abrogated and any application challenging the competency of a Suit or jurisdiction of Court or any irregularity in any Suit can be taken together with the main Suit or pleadings. Anything short of that, such obligation is incompetent and shall be dismissed. In this case this Court holds that the Preliminary Objection in this case having fallen short of the above is incompetent and it is dismissed on the ground that it was filed without any pleading.

On the issue of the Preliminary Objection been filed out of time, it is the humble view of this Court that the 2nd Defendant ought to have obtained the leave of this Court to regularize the said Preliminary before moving same. Failure to do so on its own makes the Preliminary Objection fundamentally incompetent and it is therefore dismissed on that ground.

It is also the humble view of this Court that, as already stated, making the 2nd Defendant and 3rd Defendant parties in this case does not in any way make this Suit incompetent or make this Court to lack jurisdiction to entertain same. Besides, the subject matter in this case does not fall under the provision of **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). Hence, this Court has the jurisdiction to entertain it and to that extent the Preliminary Objection fails and has no merit.

The Claimant is right and making the Agencies of the Federal Government (1st – 3rd Defendants) parties in this Suit is proper and not caught up by **S. 251(1) (p) (q) & (r) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). The Court refers to the decision in the case of:

Mduafofokwa V. Abia State Supra @ Pg. 479 – 480 Para C – D

In this case, a peep at the cause of action shows that the issue is on the seizure of property which is located within the jurisdiction of this Court and the publishing of notice of seizure. That is not in any way bordered on the administration or management and control of the Agency of the Federal Government – (1st – 3rd Defendants) in this Suit. The Claimant is only seeking redress against the alleged taking over of the said property by the Agency of the Federal Government which the Claimant claims to have acquired legally and lawfully.

It is imperative to state that in this Preliminary Objection, this Court is not here to determine the merit of the case of the Claimant but the competence and jurisdiction of the Court to determine same.

So going by all the above, this Court has jurisdiction to determine the Suit. So this Court holds. The Preliminary Objection is incompetent and it is hereby dismissed based on that. See also the case of:

SPDC V. Sirpi-Alysteel Const. Ltd Supra

Hence, by the nature of the Claimant's claim, this Court has jurisdiction to entertain this Suit. So this Court holds.

In the final analysis, it is the final view of this Court that there is no merit in this Preliminary Objection as this Court has jurisdiction and the Preliminary Objection is incompetent, frivolous and a ploy to waste time. It is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

CLAIMANT COUNSEL: ALIYU ALHASSAN ESQ.

1ST DEFENDANTS' COUNSEL: LESLIA A. DAN ESQ.

2ND DEFENDANTS' COUNSEL: OLUBUNMI IKUPOLATI ESQ.

3RD DEFENDANT: NOT REPRESENTED.